IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 12794 of 2004

Between:

P.Durga Prasad, S/o.Gopal Rao,
R/o.9th Ward Avanigadda, Krishna Dist.

..... PETITIONER

AND

1.State of A.P. rep. by the Secretary to the Govt., Agrl.and Co-operation

Department, Secretariat Buildings Hyderabad.
2.The Commissioner and Registrar of Co-operative Societies, Gruhakalpa,

Hyderabad.
3.The Deputy Registrar of Co-operative Societies, Machilipatnam, Krishna.
4.The Co-operative Sub Registrar Sale officer and Arbitrator,

Machipatnam,Krishna.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a direction, order or writ more particularly one in the nature of mandamus; a) declaring the action of the 4th Respondent in issuing action notice proposing to conduct the sale on the 23rd of July, 2004 as arbitrary and unsustainable, b) consequently, direct the respondents to retrain from taking any penal action including sale of the immovable property in pursuance of the surcharge order in Rc.No.2443/2003/D, dated 16-3-2004 of the 3rd respondent herein.

Counsel for the Petitioner: MR.SIVA

Counsel for the Respondent Nos.1 to 3: GP FOR COOPERATION

Counsel for the Respondent No.4: MR.B.ADINARAYANA RAO

The Court at the admission stage made the following:

ORDER:

It is not in dispute that surcharge proceedings were initiated against the petitioner under Section 60 of the Andhra Pradesh Cooperative Societies Act, 1964 and a surcharge order was passed on 16.03.2004 by the second respondent making the writ petitioner responsible jointly and severally along with one Sri George Wilson. It is also not in dispute that aggrieved by the said order, the petitioner preferred an appeal before the Andhra Pradesh Cooperative Tribunal, Vijayawada (for short 'the Tribunal') and the same has been numbered as O.A.No.60 of 2004. The petitioner states that he also moved an application seeking stay of all further proceedings in pursuance of the surcharge order, but the Tribunal below failed to consider the same and in the meanwhile, the fourth respondent issued the impugned auction notice proposing to sell the attached property on 23.07.2004. Hence, this writ petition seeking a declaration that the action of the fourth respondent is arbitrary and illegal. This Court, while directing notice to the respondents, by order dated 22.07.2004 granted interim stay of the proposed auction.

Though the matter underwent several adjournments, the respondents did not choose to file any counter.

Having heard the learned counsel for the petitioner and the learned Government Pleader for Cooperation appearing for the respondents,

and particularly keeping in view that the statutory appeal is pending, without expressing any opinion with regard to the validity of the surcharge order, I deem it appropriate to dispose of the writ petition with a direction to A.P. Cooperative Tribunal, Vijayawada, to dispose of the miscellaneous application for stay filed by the petitioner in O.A.No.60 of 2004 as expeditiously as possible, preferably within a period of two weeks from the date of receipt of a copy of this order. Till the disposal of the application for stay, the property in question shall not be sold. However, the attachment shall continue.

The writ petition is accordingly disposed of. No costs.

_____

28.10.2004

Note: Communicate copy of this order to

A.P.Cooperative Tribunal, Vijayawada.

(By Order)

VGB

To

1.The Secretary, State of A.P., Agrl. and Co-operation

Department, Secretariat Buildings Hyderabad.
2.The Commissioner and Registrar of Co-operative Societies, Gruhakalpa,

Hyderabad.
3.The Deputy Registrar of Co-operative Societies, Machilipatnam, Krishna.
4.The Co-operative Sub Registrar Sale officer and Arbitrator,

Machipatnam,Krishna.

5.The A.P. Cooperative Tribunal, Vijayawada.

6.2CCs to the Government Pleader for Cooperation, High Court

Buildings, Hyderabad (OUT)

7.2CD copies